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FILED

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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Main, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

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12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

13 Plaintiff,)

14 v.)

15
16 SCHURMAN FINE PAPERS; and Defendant^{al})
DOES 1 through 200, inclusive,)

17 Defendants.)
18
19

Case No.

Civ 1000626

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6, *et seq.*

(Other)

BSS 2-4-10

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SUMMONS ISSUED

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of Defendants' jeweled boxes (the "Products").
10 Consumers, including pregnant women and children, are exposed to Lead when they use, touch
11 or otherwise come into contact with the Products.

12 2. Under California's Proposition 65, Health and Safety Code §25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
15 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
16 introduce Products contaminated with significant quantities of Lead into the California
17 marketplace, exposing consumers of their Products, many of whom are pregnant women and
18 children, to Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and
20 other consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
21 reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the
22 warning provision of Proposition 65. Health & Safety Code §25249.6.

23 **PARTIES**

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
25 non-profit corporation dedicated to protecting the public from environmental health hazards and
26 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
27 State of California. CEH is a "person" within the meaning of Health & Safety Code
28 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &

1 violations arise in the County of Marin.

2 **BACKGROUND FACTS**

3 12. The People of the State of California have declared by initiative under
4 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
5 defects, or other reproductive harm.” Proposition 65, §1(b).

6 13. To effectuate this goal, Proposition 65 prohibits exposing people to
7 chemicals listed by the State of California as known to cause cancer, birth defects or other
8 reproductive harm above certain levels without a “clear and reasonable warning” unless the
9 business responsible for the exposure can prove that it fits within a statutory exemption. Health
10 & Safety Code §25249.6 states, in pertinent part:

11 No person in the course of doing business shall knowingly and
12 intentionally expose any individual to a chemical known to the
13 state to cause cancer or reproductive toxicity without first giving
14 clear and reasonable warning to such individual. . .

15 14. On February 27, 1987, the State of California officially listed lead as a
16 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
17 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
18 the developing fetus, “female reproductive toxicity,” which means harm to the female
19 reproductive system, and “male reproductive toxicity,” which means harm to the male
20 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,
21 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
22 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
23 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

24 15. On October 1, 1992, the State of California officially listed lead and lead
25 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
26 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
27 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
28 §27001(c); Health & Safety Code §25249.10(b).

16. Young children are especially susceptible to the toxic effects of Lead.

1 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
2 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
3 absorb and retain more Lead in proportion to their weight than do adults. Young children also
4 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
5 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
6 small doses received in childhood, over time, can cause adverse health impacts, including but not
7 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
8 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
9 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

10 17. There is no safe level of exposure to Lead and even minute amounts of
11 Lead exposure have been proven harmful to children and adults. Recent studies have repeatedly
12 concluded that concentrations of Lead in children's blood previously deemed acceptable can
13 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children
14 with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*
15 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the
16 smallest detectable amount of blood Lead levels in children can mean the difference between an
17 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead
18 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

19 18. Lead exposures for pregnant women are also of particular concern in light
20 of evidence that even short term lead exposures *in utero* may have long-term harmful effects.
21 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
22 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*,
23 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*
24 *Health Perspectives* 114:5, 2006.

25 19. Defendants' Products contain sufficient quantities of Lead such that
26 consumers, including pregnant women and children, who handle the Products are exposed to
27 Lead through the average use of the Products. The route of exposure for the violations is
28 ingestion via hand-to-mouth contact after consumers touch or handle the Products, direct

1 ingestion when consumers place the Products in their mouths, and dermal absorption directly
2 through the skin when consumers touch or handle the Products.

3 20. No clear and reasonable warning is provided with the Products regarding
4 the carcinogenic or reproductive hazards of Lead.

5 21. Any person acting in the public interest has standing to enforce violations
6 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
7 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
8 action within such time. Health & Safety Code §25249.7(d).

9 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
10 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
11 the District Attorneys of every county in California, the City Attorneys of every California city
12 with a population greater than 750,000 and to each of the named Defendants. In compliance with
13 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included the
14 following information: (1) the name and address of the violators; (2) the statute violated; (3) the
15 time period during which violations occurred; (4) specific descriptions of the violations,
16 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
17 Products sold and used in violation of Proposition 65; and (5) the name of the specific
18 Proposition 65-listed chemical (Lead) that is the subject of the violations described in each of the
19 Notices.

20 23. CEH also sent a Certificate of Merit for each of the Notices to the
21 California Attorney General, the District Attorneys of every county in California, the City
22 Attorneys of every California city with a population greater than 750,000 and to the named
23 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each
24 of the Certificates certified that CEH's counsel: (1) has consulted with one or more persons with
25 relevant and appropriate experience or expertise who reviewed facts, studies or other data
26 regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information
27 obtained through such consultations, believes that there is a reasonable and meritorious case for a
28 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with

1 Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the Certificates served on the
2 Attorney General included factual information – provided on a confidential basis – sufficient to
3 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH’s
4 counsel and the facts, studies or other data reviewed by such persons.

5 24. None of the public prosecutors with the authority to prosecute violations
6 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
7 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in the
8 Notice.

9 25. Under Proposition 65, an exposure is “knowing” where the party
10 responsible for such exposure has:

11 knowledge of the fact that a[n] . . . exposure to a chemical listed
12 pursuant to [Health and Safety Code §25249.8(a)] is occurring. No
13 knowledge that the . . . exposure is unlawful is required.

14 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
16 §12201).

17 26. Defendants both know and intend that individuals, including pregnant
18 women and children, will touch or handle the Products, thus exposing them to Lead.

19 27. Defendants have been informed of the Lead in their Products by the 60-
20 Day Notice of Violation served on them by CEH.

21 28. Nevertheless, Defendants continue to expose consumers, including
22 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the
23 carcinogenic and/or reproductive hazards of Lead.

24 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein
25 prior to filing this complaint.

26 30. Any person “violating or threatening to violate” Proposition 65 may be
27 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
28 violate” is defined to mean “to create a condition in which there is a substantial probability that a

1 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
2 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

3 **FIRST CAUSE OF ACTION**

4 **(Violations of the Health & Safety Code §25249.6)**

5 31. CEH realleges and incorporates by reference as if specifically set forth
6 herein Paragraphs 1 through 30, inclusive.

7 32. By placing the Products into the stream of commerce, each Defendant is a
8 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

9 33. Defendants know that average use of the Products will expose users of the
10 Products to Lead. Defendants intend that the Products be used in a manner that results in
11 exposures to Lead from the Products.

12 34. Defendants have failed, and continue to fail, to provide clear and
13 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
14 the Products.

15 35. Lead is a chemical listed by the State of California as known to cause
16 cancer, birth defects and other reproductive harm.

17 36. By committing the acts alleged above, Defendants have at all times
18 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
19 individuals to Lead without first giving clear and reasonable warnings to such individuals
20 regarding the carcinogenicity and reproductive toxicity of Lead.

21 Wherefore, CEH prays judgment against Defendants, as set forth hereafter.

22 **PRAYER FOR RELIEF**

23 Wherefore, CEH prays for judgment against Defendants as follows:

24 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
25 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
26 Proposition 65 according to proof;

27 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
28 preliminarily and permanently enjoin Defendants from offering the Products for sale in

1 California with sufficient quantities of Lead such that users of the Products are exposed to a
2 "significant amount" of Lead under Proposition 65 without providing clear and reasonable
3 warnings, as CEH shall specify in further application to the Court;

4 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
5 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
6 Products sold by Defendants, as CEH shall specify in further application to the Court;

7 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
8 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

9 5. That the Court grant such other and further relief as may be just and
10 proper.

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12 Dated: February 4, 2010

Respectfully submitted,

13 LEXINGTON LAW GROUP

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16 Eric S. Somers
17 Attorneys for Plaintiff
18 CENTER FOR ENVIRONMENTAL
19 HEALTH
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